

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.30722 of 2019 (O&M)
Date of decision: 28.11.2019**

Dr. Kanwal Marwaha

...Petitioner

Vs.

State of Punjab and Others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. D.S.Patwalia, Sr. Advocate with
Mr. Kannan Malik, Advocate
for the petitioner.

Mr. R.S. Kalra, Advocate
for the respondent.

Mr. Shreesh Gupta, Sr. DAG, Punjab.

RAKESH KUMAR JAIN, J.(ORAL)

The petitioner has challenged the minutes of the meeting dated 02.09.2019 (Annexure P-13) recorded by the Recruitment and Promotion Committee (Superior Judicial Services), Punjab and Haryana High Court [for short 'the Committee'] by which representation submitted by her for rectification of the answer key of the paper of General Knowledge has been rejected.

In brief, vide notification No.198 Gaz.I/VI. F.2 dated 16.12.2016, applications were invited to fill up 7 vacancies (six existing and one anticipated) for appointment to the post of Punjab Superior Judicial Service by way of direct recruitment from amongst the eligible Advocates through the competitive

examination under Rule 7(3)(c) of Punjab Superior Judicial Service Rules, 2007 [for short “the Rules”]. The last date for submission of the applications and eligibility in all respects for the candidates was fixed as 16.01.2017.

The particulars of the vacancies and reservation offered to the candidates is as under:-

<i>Sr. No.</i>	<i>Category</i>	<i>Total vacancies</i>
1	General (Sports person), Punjab <i>(Being advertised for the 2nd time)</i> <i>Anticipated vacancy of General Category is being reverted to General (Sports person) in lieu of taken it in previous recruitment process.</i>	1
2	Scheduled Caste Others, Punjab	1
3	Scheduled Caste (Sports person), Punjab <i>(Being advertised for the 2nd time)</i>	1
4	Scheduled Caste (Balmiki/Mazhbi Sikh), Punjab <i>(Being advertised for the 2nd time)</i>	1
5	Backward Class, Punjab <i>(Out of 2 vacancies 1 vacancy is being advertised for the 2nd time)</i>	2
6	Physically Handicapped (Persons With Disabilities), Punjab <i>(Being advertised for the 2nd time)</i>	1
	Total	7

Attracted by the advertisement, the petitioner had also applied to take the written examination which was to be followed by an interview.

The written examination was of 750 marks divided as under:-

<i>Civil Law-I</i>	<i>(200 Marks)</i>
<i>Civil Law-II</i>	<i>(200 Marks)</i>
<i>Criminal Law</i>	<i>(200 Marks)</i>

Language Paper (100 Marks)

General Knowledge Paper (50 Marks)

As per Clause (iv) of the advertisement, the candidates securing 40% or more marks in each paper were to be called for *viva voce*.

The examination was held between 16th & 18th November, 2018. The petitioner appeared in all the exams and secured more than 40% marks in each paper but secured 19 marks in the paper of General Knowledge which was less than 40% marks. Consequently, she was not called for the interview. The result of the written test was declared on 01.02.2019 and after the *viva voce*, the final result was declared on 27.02.2019. Since the petitioner was a keen candidate, therefore, obviously she knew that she can make a representation to the concerned quarters to raise her grievance. She did not file the representation immediately rather it was filed after a delay of more than a month on 03.04.2019. The representation, as it is, was put up before the Committee. It was deferred on 27.05.2019 as no decision was taken by the Committee. However, in the meantime, on 30.05.2019, a fresh advertisement, by way of Notification No.97 Gaz.I/VI.F.2 dated 30.05.2019 was issued, inviting applications to fill up 8 vacancies for appointment of Punjab Superior Judicial Service by way of direct recruitment from amongst the eligible Advocates through the competitive examination.

The breakup of the vacancies, which were offered, read as under:-

<i>Sr. No.</i>	<i>Category</i>	<i>No. of Vacancy</i>	<i>Backlog Vacancy</i>	<i>Total Vacancies</i>	<i>Remarks</i>
1	General	2	0	2	
2	General (Sports Person), Punjab	0	1	1	Being advertised for the 3 rd time.
3	Scheduled Castes Others, Punjab.	0	1	1	
4	Scheduled Castes (Sports Person), Punjab	0	1	1	Being advertised for the 3 rd time.
5	Scheduled Castes (Balmiki/Mazhbi Sikh, Punjab)	0	1	1	Being advertised for the 3 rd time.
6	Backward Class, Punjab	0	1	1	Being advertised for the 2 nd time.
7	Physically handicapped (Differently Abled Persons) Punjab, to be filled by interchange amongst the five sub-categories (a) to (e) as per the Rights of Persons with Disabilities Act, 2016	0	1	1	Being advertised for the 3 rd time.
	Total	2	6	8	

The petitioner applied again pursuant to the notification dated 30.05.2019 and roll No.1081 was issued to her to appear in the examination which is going to be held between 29th November & 1st of December, 2019 in respect of the vacancies offered vide notification dated 30.05.2019.

While these proceedings were going on, the representation of the petitioner, put up before the Committee on 02.09.2019 was rejected with the following observations:-

"Meeting note perused. Ms. Kanwal Marwaha (Roll No.1098) was a candidate in the written examination conducted from amongst the Advocates, under rule 7(3) (c) of Punjab Superior Judicial Service Rules, 2007 held from 16.11.2018 to 18.11.2018. Vide letter No.2288 dated 11.04.2019 she has sought rectification of the result of the General knowledge paper. The committee has gone through the contents of the

letter and the documents annexed by the candidate. Final result has already been declared and the recruitment process thereafter has been completed. Moreover, there is no provision under the rules for re-evaluation of the answer sheets. Hence, the representation is hereby rejected."

The aforesaid meeting note was approved by Hon'ble the Chief Justice on 05.09.2019. Thereafter, the petitioner has approached this Court by way of this writ petition dated 14.10.2019 to assail the validity of the minutes of the meeting dated 02.09.2019, on the ground that answers to the five questions i.e. Questions No. 13, 35, 33, 94 and 31 are either not in consonance with the material relied upon by her or are ambiguous in nature.

Counsel for the petitioner has submitted that that he is not putting much emphasis on questions No. 13 and 31 but insisted upon the correctness of the answer key of questions No. 35, 33 and 94. He has submitted that error in the answer key of question paper should not be detrimental to the interest of the candidate or the petitioner and has relied upon decisions of the Supreme Court rendered in the cases of "**Kanpur University and Others Vs. Samir Gupta and Others 1983 AIR (SC) 1230** and "**Richal & Ors. etc. Vs. Rajasthan Public Service Commission & Ors. 2018 (2) S.C.T. 773** and a decision rendered by Division Bench of this Court in **CWP No.28691 of 2019** titled as **Harvinder Singh Johal Vs. Registrar General, Hon'ble Punjab and Haryana High Court and Another** decided on 06.11.2019. He has submitted that the answer key provided by the examiner of questions No.33, 35 and 94 are

incorrect as per the material relied upon by the petitioner and has further argued that the petitioner is not asking for re-evaluation but for granting the marks on the ground that the answer key is incorrect or in the alternative has prayed that it may be re-examined by the same body (Committee) who had earlier rejected the representation.

On the other hand, counsel appearing on behalf of the respondents has argued that this Court does not have any jurisdiction to interfere in such type of matters and has relied upon the following decisions:

1. Ran Vijay Singh and others Vs. State of U.P.

And others 2018 (1) S.C.T. 334,

***2. Nitin Pathak Vs. State of M.P. & Others 2018
(2) S.C.T. 251 Full Bench of the Madhya
Pradesh***

***3. Subhash Chand Vs. High Court of Delhi 2019
(4) S.C.T. 255.***

***4. Judgment of Supreme Court of India in case
H.P. Public Service Commission Vs. Mukesh
Thakur and Another 2010 (3) S.C.T. 121 and;***

***5. In case of Pramod Kumar Srivastava Vs.
Chairman, Bihar Public Service Commission,
Patna and Others 2004 (3) S.C.T. 831.***

He has further relied upon a Division Bench judgment of this Court in the case of **Anuj Kumar Jain Vs. State of Haryana and**

Another passed in **CWP 9040 of 2013** dated 02.05.2013 to contend that the petitioner has already missed the bus because the fresh advertisement has been issued and she has applied in the fresh advertisement also. He further submitted that it is a case where the petitioner is crying over the spilt milk because she had attempted all the questions like all other candidates but no other writ petition has been filed by any other candidate though 145 candidates had appeared in the written test and attempted the same question paper. It is further submitted that the petitioner has challenged the correctness of the questions as per her own understanding and in this regard it is submitted that the answer of question No.35, projected by the petitioner, that the answer key should be Mizoram Court because Gauhati High Court has the jurisdiction on the Mizoram Court, is a figment of imagination to assert that the answer proposed by her is the correct answer and not the answer which is prepared by the examiner. Similarly, it is submitted that question No. 33 "two plus two dialogues between India and U.S. To be held in?" for which the answer key provides as 'New Delhi' and the petitioner says that it is New York. It is submitted that the petitioner has attempted the question thinking that by the time she is attempting the question the meeting at New Delhi had already been held. Lastly, insofar as question No.94 is concerned, the counsel for the respondents has submitted that the answer key has been chosen because a similar answer key has been prepared by the examiner in this case was prepared by the Examiner of NEET JRF (Junior Research Fellow) Paper.

In rebuttal, counsel for the petitioner has submitted that if

the petitioner has approached this Court, at this stage, in October 2019 as the result was declared on 27.02.2019, there is no delay on her part because the representation made by her was decided on September 02, 2019 and the fresh advertisement shall not debar her to challenge the correctness of the examination which she had already taken.

Though counsel for the respondents has referred to the Apex Court decisions to the effect that the re-evaluation without the presence of the categorical Rule in the Rules is not permissible but the counsel for the petitioner submits that the petitioner is not asking for the re-evaluation because the petitioner admits that the law regarding the re-evaluation has been well settled by the Hon'ble Apex Court but he has asked for the reconsideration of her case by the Committee or by an Expert Committee.

We have heard learned counsel for the parties and perused the record with their able assistance.

The counsel for the petitioner has fairly conceded that the re-evaluation cannot be granted. However, he has referred to the decision in the case of ***Samir Gupta (Supra)*** and ***Richal & Ors (Supra)*** to contend that if the answer is demonstrably wrong then this Court can always interfere and has also relied upon the case of ***Harvinder Singh Johal (supra)*** whereas, the judgements relied upon by learned counsel for the respondents in this regard are on the different tangent as the Hon'ble Supreme Court has held that the Court should presume correctness of the answer key and in the event of a doubt, the benefit should be given to the examining

authority rather than to the candidate. The judgment relied upon by the respondents in the case of ***Ran Vijay Singh (supra)*** lays down the following texts :-

"The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalization" and only in rare or exceptional cases that a material error has been committed; (iii) "The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination

process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse – exclude the suspect or offending question.

It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination

authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination – whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers".

Similarly, in the case of *Nitin pathak (Supra)*, wherein the following issue was:-

1. Whether this Court in exercise of power of judicial review can refer the matter to a Court chosen Expert?

2. Whether in exercise of power of judicial review, this Court can act as Court of appeal to take a different view than what has been finalized as the model answer key by the Examining Body?

(3) And all these questions have been answered as under: -

"In view of the discussion above, we hold that in exercise of power of Judicial Review, the Court should not refer the matter to court appointed expert as the courts have a very limited role particularly when no mala fides have been alleged against the experts constituted to finalize answer key. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts.

In respect of the second question, this Court does not and should not act as Court of Appeal in the matter of opinion of experts in academic matters as the power of judicial review is concerned, not with the decision, but with the decision-making process. The Court should not under the guise of preventing the abuse of power be itself guilty of usurping power."

Similarly the case of **Anuj Kumar Jain (supra)**, the Bench has refused to interfere on the ground that the fresh advertisement has already been issued. Even though there are judgments of the Hon'ble Apex Court in favour of the petitioner and against him but the judgements are on their peculiar facts and circumstances, therefore, there is no quarrel with the law laid down by the Hon'ble Apex Court in the said judgments but at present we are concerned with the answer key of the three questions, the correctness of which the petitioner has challenged and we are of the considered view that these questions are such in which the Court cannot act as an expert to find out as to whether the reasoning given by the petitioner is correct *vis-a-vis* the answer key prepared by the examiner. The answer key is not thus found to be demonstrably incorrect in order to attract the decision in the case of **Samir Gupta (supra)**. Moreover, we are of the considered opinion that not only the petitioner but all other candidates who had appeared in the said examination had attempted these questions and no one has raised an issue about it especially at this stage when the second examination is just around the corner.

In these peculiar facts and circumstances, we hardly find

any merit in the present petition and the same is hereby dismissed
without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

November 28, 2019
Poonam Sharma

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No